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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
 Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
 LEAVE TO FILE UNDER SEAL
 EXHIBITS IN SUPPORT OF
 BARD'S MOTIONS TO STRIKE
 PORTIONS OF DR. MUEHRCKE
 AND DR. McMEEKING'S *TINLIN*
 REPORTS**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively "Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order (Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for leave to file under seal the exhibits attached in support of Bard's Motions to Strike the Certain Portions of Dr. Muehrcke and Dr. McMeeking's *Tinlin* Reports served on December 7, 2018. ("the Motions"). The exhibits to the Motions contain certain trade secrets and confidential information that are protected under the Stipulated Protective

Order, warranting protection from public disclosure. Additionally, the exhibits contain confidential medial information about Ms. Tinlin and other MDL plaintifffs that the plaintiffs have sought to seal in prior submissions. Accordingly, there is good cause to grant Defendants’ Motion for Leave to File Under Seal the Exhibits in Support of Bard’s Motions. Plaintiffs have agreed to the filing of such motions in the past; however, to date, Plaintiffs’ have not yet responded to Defendants’ attempts to meet and confer on whether Plaintiffs oppose this Motion. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

ARGUMENT AND CITATION OF AUTHORITY

“When a court grants a protective order for information produced during discovery, it already has determined that ‘good cause’ exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality.” *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits related to “Medicis’ marketing strategy, Acella’s product formulation,...various e-mails and deposition transcripts, viscosity test data, sales and marketing information, and various other documents” because “[m]uch of this information has been previously sealed by the Court, has been designated as confidential by the parties pursuant to the protective order in this case, or could otherwise potentially harm the parties if released publicly because of its confidential and sensitive nature.”).

The exhibits to Bard’s Motions contain and recite pieces of highly competitive, confidential, proprietary information that warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the documents are not made public by Bard and, if obtained by Bard’s competitors, could give an unfair economic advantage to those competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-3721, 2004 WL 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). The Reports cite and extensively quote dozens of confidential

1 Bard documents, including technical and design files, testing documents, internal adverse
 2 event investigations and analysis, design and risk management documents, and numerous
 3 internal e-mails between high-level Bard employees. The Reports quote so extensively
 4 from confidential documents that filing the Reports is akin to filing the documents
 5 themselves. Except for a small number of publicly available documents, all of the Bard
 6 documents cited in the Reports were produced to Plaintiffs as “Confidential – Subject to
 7 Protective Order” on each page pursuant to Stipulated Protective Order (Doc. 269) ¶ 6.

8 The public disclosure of these exhibits would reveal confidential, proprietary and
 9 trade secret information and would create a heightened risk of irreparable harm to Bard’s
 10 competitive business concerns. Further, its inclusion in the public record would not only
 11 harm Bard because of the trade secrets and confidential information it contains, but it
 12 would also eviscerate the significant time and resources Bard has expended in protecting
 13 its business information.

14 Further, both expert reports at issue contain information about Mrs. Tinlin and her
 15 medical conditions, diagnoses and treatment. And Dr. Muehrcke’s reports attached as
 16 Exhibit B to the Motion to Strike certain of his opinions contain information about the
 17 medical conditions, diagnoses and treatment of the plaintiffs address in those reports. This
 18 is information that the plaintiffs treated as confidential and moved to seal in other
 19 submissions regarding MDL plaintiffs.

20 Accordingly, good cause exists for sealing the Exhibits at issue.

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1 RESPECTFULLY SUBMITTED this 21st day of December, 2018.

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EXHIBIT A

DOCUMENTS PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following documents:

1. Exhibit A to Dr. Muehrcke motion – Dr. Muehrcke *Tinlin* Expert Disclosure
2. Exhibit B to Dr. Muehrcke motion – Dr. Muehrcke Reports regarding *Booker, Jones, Hyde, Mulkey, and Kruse*
3. Exhibit A to Dr. McMeeking motion – Dr. McMeeking’s *Tinlin* Report
4. Exhibit B to Dr. McMeeking motion – Dr. Meeking’s Generic Report